SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-563
Lower Tribunal No. 19-DR-005932

BRADLEY E. PARKER,

Appellant,

v.

HEATHER PARKER,

Appellee.

Appeal from the Circuit Court for Lee County.
John S. Carlin, Judge.

June 14, 2023

COHEN, J.

This trial primarily concerned Mrs. Parker's request to relocate with their children and Mr. Parker's time-sharing request. The financial issues were secondary; neither lawyer asked more than a handful of questions relating to equitable distribution and child support. This placed the trial court in the unenviable position of having to make determinations as to the financial issues with little assistance.

Mr. Parker complains he was limited in his presentation of evidence. This argument is completely devoid of merit. The trial court allowed these parties ample time to present their cases. Mr. Parker did not seek additional time, nor did he proffer additional testimony. Rather, he rested his case after two trial days, declined to call rebuttal witnesses despite trial court invitation on the third day, and delivered a closing argument that did not mention financial matters.

He also argues that the court erroneously ordered him to pay "arrearages," when the court had not previously ordered child support. While Mr. Parker places great weight on the characterization of the child support as "arrearages," the sums are actually retroactive child support. They are referred to as "arrearages" in the trial court's order only because that is the term both parties chose to use.

Mr. Parker claims the court also erred in awarding "arrearages" because such a request was not sought in Mrs. Parker's pleadings. Mr. Parker is correct that there was no pleading for retroactive child support. We note that Fla. Stat.61.30 (17) Fla. Statutes (2019), provides:

> In an initial determination of child support, whether in a paternity action, dissolution of marriage action, or petition for support during the marriage, the court has discretion to award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition.

We have no need to address Mr. Parker's argument because that issue was tried by implied consent. *See Aburoumi v. Espinosa*, 305 So. 3d 825, 826 (Fla. 5th DCA 2020) (holding the issue of retroactive child support was tried by implied consent), *Hemraj v. Hemraj*, 620 So. 2d 1300, 1301 (Fla. 4th DCA 1993) (holding that issue of alimony was tried by implied consent, despite absence of pleading specifically demanding same), *Subramanian v. Subramanian*, 260 So. 3d 1075, 1076 (Fla. 4th DCA 2018) (holding that issue of attorney fees tried by implied consent where, even though it was not pled, both parties addressed the issue of entitlement). Mr. Parker did not object when Mrs. Parker testified as to the lack of child support payments nor when she raised the issue with the court following closing arguments.

Of course, retroactive child support flows from the initial determination of the amount of the child support obligation. Mr. Parker claims the trial court erred in its determination of the amount, incorrectly calculating Mrs. Parker's net income. The court made factual findings as to the parties' incomes based upon the testimony and financial affidavits. Like most of the economic issues raised on appeal, these issues were presented unclearly, but sufficiently, for determination by the trial court. Moreover, the figures used by the trial court are consistent with the child support guidelines worksheet provided to the court by Mr. Parker, and they mirror the figures

submitted to the court in Mr. Parker's proposed final judgment.[1] Any error in the child support calculations was both invited and unpreserved.

Mr. Parker argues that, should the court uphold the award of retroactive child support, he should receive credits against that award. He seeks $18,000 for the annual rental value of Mrs. Parker's pre-marital property. His argument ignores, however, the trial court's acceptance of Mrs. Parker's testimony as to the expenses she incurred on the rental property. Mr. Parker seeks the benefit of the monies received without the burden of the expenses incurred. The trial court properly considered both.

Mr. Parker also seeks a credit for a tax refund, an insurance company reimbursement of medical expenses (paid by Mrs. Parker), and government stimulus monies received during COVID. Mrs. Parker testified that Mr. Parker did not give her any stimulus money and they split the tax refund. Competent substantial evidence supported the trial courts denial of Mr. Parker's request.

We find no abuse of discretion in the trial court's valuation of the rental property and equitable distribution of Mr. Parker's share of the property. The trial court awarded the exact amount requested by Mr. Parker in his proposed final judgment, and that amount was also supported by the evidence.

[1] The language in the final judgment was pulled verbatim from Mr. Parker's proposed final judgment.

Mrs. Parker acknowledges that the trial court inadvertently counted daycare costs twice. She concedes that the childcare costs should not have been included in the retroactive guideline amounts, as they were separately ordered for reimbursement.

We remand for correction of the day care cost calculation and for the trial court to correct the final judgment to read "retroactive child support" in place of "arrears." We otherwise affirm.

AFFIRMED in part, REVERSED in part, and REMANDED.

TRAVER, C.J., and SMITH, JJ., concur.

Luis E. Insignares, of Luis E. Insignares, P.A., Fort Myers, for Appellant.

Sarah M. Oquendo, of Coleman, Hazzard, Taylor, Klaus, Doupe & Diaz, P.A., Naples, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED